2011

What Is International Economic Law?

Steve Charnovitz
George Washington University Law School, scharnovitz@law.gwu.edu

Public Law and Legal Theory Paper No. 2012-137

Legal Studies Research Paper No. 2012-137

What Is International Economic Law?

Steve Charnovitz

2011

14 J. Int'l. Econ. L. 3 (2011)

Journal of International Economic Law 14(1), 3–22
doi:10.1093/jiel/jgr008.

WHAT IS INTERNATIONAL ECONOMIC LAW?

*Steve Charnovitz**

It is not inappropriate to begin by asking whether there is such a thing as international economic law, a body of law that can be subjected to systematic treatment between the covers of a book.[1]

I. INTRODUCTION: THE LANDSCAPE OF INTERNATIONAL ECONOMIC LAW

Although its roots go back to ancient civilization, 'international economic law' (IEcL), termed as such, took form as a topic of law in the mid-20th century.[2] Over a half century later, the meaning of IEcL remains contested.[3] Indeed, I have not been able to find even two definitions that match. For example, a treatise by Ignaz Seidl-Hohenveldern explains that IEcL 'refers to those rules of public international law, which *directly* concern economic exchanges between the subjects of international law...', and his study specifically omits 'aspects of international law as are *indirectly* affected by economic activities....'[4] David Bederman posits that IEcL 'subsumes a host of issues. At the minimum, it includes (i) the background rules of private international commerce, (ii) the architecture of the global trading and monetary systems, and (iii) the principles for international development and investment.'[5] Anthony Aust suggests that IEcL 'is a convenient term to cover mainly the multitude of bilateral and multilateral treaties made since the Second World War on trade, commerce and investment.'[6]

* Associate Professor, George Washington University Law School, Washington, DC, USA. E-mail: charnovitz@me.com

[1] Andreas F. Lowenfeld, *International Economic Law* (Oxford: Oxford University Press, 2002) v.

[2] Since the acronym 'IEL' is often used for international environmental law, I employ IEcL as a new acronym for international economic law.

[3] See Detlev F. Vagts, 'International Economic Law and the *American Journal of International Law*', 100 American Journal of International Law 769 (2006), at 769 (noting that the scope of international economic law is controversial). This centennial essay by Professor Vagts provided inspiration and insight for my 2011 opening essay.

[4] Ignaz Seidl-Hohenveldern, *International Economic Law*, 3rd rev. ed. (The Hague: Kluwer Law International, 1999) 1 (emphasis added). The 'subjects' of international law are defined broadly in his book to include international organizations, multinational enterprises, NGOs, and individuals.

[5] David Bederman, *International Economic Law* (New York: Foundation Press, 2001) 141.

[6] Anthony Aust, *Handbook of International Law* (Cambridge: Cambridge University Press, 2005) 372.

A moment's reflection indicates that these three definitions are inconsistent with each other. Bederman includes the United Nations (UN) Convention on Contracts for the International Sale of Goods (CISG) in his treatment of IEcL while Seidl-Hohenveldern does not. Seidl-Hohenveldern does not explain how to distinguish between activities that directly affect economic exchange versus those that indirectly affect exchange. Moreover, he includes a short chapter on 'Human rights of economic value', a set of rights that many would say only indirectly affect exchange. Aust does not include the rules of the International Monetary Fund (IMF) as part of IEcL, while Bederman and Seidl-Hohenveldern do. Perhaps the difficulty of mapping the field is why some editors who organize projects about IEcL appear to dodge the knotty task of definition.[7]

Answering the question of what IEcL is can usefully begin by the ordinary meaning of those three words. In being 'international', IEcL is law applying to matters that cross borders. A crossed border can mean anything spatially from a land frontier to covering the entire planet. Once there is a crossing of a border, then the transborder matter is no longer within the sole jurisdiction of one state. As more and more matters cross borders, the province of international law has grown. This trend was apparent even by 1925 when William E. Rappard predicted that '[l]ittle by little the boundaries of what is held to be solely within the domestic jurisdiction of individual States are receding and the realm of what is governed by international law is expanding.'[8]

The 'economic' in IEcL refers to the economy itself (and perhaps also to economic analysis). Production in an economy is a function of how efficiently the four factors of production—land, labor, capital and management—are used. Economics becomes international when it considers external influences on a domestic economy.

One of the early users of the term 'world economy' was Josef Grunzel who in 1916 observed that '[t]here cannot be a world economy or international economy' then existing 'because a world-will which would rank above the national wills and in which they would find expression does not exist.'[9] Twenty years later, Grunzel's pessimism had been overcome. For example in 1925, Albert Thomas, the first Director of the International Labour Organization (ILO), called for intergovernmental efforts to develop a

[7] For example, see Meredith Kolksy Lewis and Susy Frankel (eds), *International Economic Law and National Autonomy* (Cambridge: Cambridge University Press, 2010) (lacking any definition of IEcL).

[8] William E. Rappard, *International Relations as Viewed from Geneva* (New Haven: Yale University Press, 1925) 127.

[9] Josef Grunzel, *Economic Protectionism*, Eugen von Philippovich (ed.) (Oxford: Oxford University Press, 1916) 3.

'world economy . . . out of the interdependence of national economies,' and to give a 'formal status' to the world economy.[10]

Once the world economy is acknowledged, the core question of international economics is what policies are most conducive to boosting economic growth and human welfare. Some of the needed policies will be macro (e.g. addressing currency imbalances) while many others will be micro (e.g. tax incentives for innovation). Still other needed policies are institutional (e.g. clear property rights). When there is a need for law to govern such national or international policies, that law is part of IEcL.

The word 'law' in IEcL includes treaty and customary law, as well as soft law. In contrast to other areas of public international law, IEcL tends to be positive law rather than customary.[11] A law of the world economy could possibly apply to three phenomena: (i) rules between states, (ii) rules for how states treat individuals, and (iii) rules for individual to individual transactions. Rather than being included in IEcL, this third category, the law for individual private transactions, is often called 'private international law' and is distinguished from 'public' international economic law. Although such a distinction can be argued for, the better argument is that the basic treaties authored by the UN and its Commission on International Trade Law (UNCITRAL), such as the CISG and the New York Convention,[12] are important laws for the world economy and hence are part of IEcL. In addition, the scope of law in IEcL goes beyond so-called hard law and also includes the vital non-governmental standard setting that effectively regulates private economic actors.[13]

Using the above definitions of international, economic, and law, the province of IEcL can be delineated. It would include legal norms legislated (or alluded to) in the law of World Trade Organization (WTO) such as alien investor rights (Mode 3 services), anti-counterfeiting, bounties/subsidies, commodities and raw material, competition/antitrust, conservation of natural resources, copyright, currency and exchange, customs and publicity, development and development assistance, double taxation, government procurement, multilateral economic sanctions, patents, sanitary measures, services regulation, state enterprises, technical standards, telecom, temporary

[10] Albert Thomas, *International Social Policy* (Geneva: ILO, 1948) 108. Thomas was technically the Director of the International Labour Office. Later the 'Office' became synonymous with the 'Organization' of which it was the central part. Today, the ILO website calls Thomas the first Director-General of the ILO.

[11] To be sure, the roots of IEcL can be found in natural law and lex mercatoria. Mark W. Janis, *An Introduction to International Law*, 2nd ed. (Boston: Little, Brown and Company, 1993) 274–78; Benn Steil and Marcus Hinds, *Money, Markets, and Sovereignty* (New Haven: Yale University Press, 2009) 11–26.

[12] See Diane P. Wood, 'Private Dispute Resolution in International Economic Law', in Andrew T. Guzman and Alan O. Sykes (eds), *Research Handbook in International Economic Law* (Cheltenham: Edward Elgar, 2007) 575–97 at 578–81.

[13] Steil and Hinds, above n 11, at 26–32 (terming this 'Modern Lex Mercatoria').

migration (Mode 4 services), trademarks, transparency, and transit. It would also include international legal norms that are not part of the WTO such as those regulating banking, belligerent occupation,[14] civil aviation, corruption, emigration, energy security, expropriation, fisheries, forestry, the internet, maritime and shipping, odious trade (e.g. sodium pentothal), population, rivers, sex trafficking, sovereign lending, space, statistics, transborder insolvency, weights and measures, and wildlife trade. In other words, the intersection of international + economic + law yields a very broad body of law.

Indeed too broad. Consequently, a reconsideration of method is required. To keep IEcL from swallowing everything, a fourth delimiter needs to be brought into play. One possibility is to insist that a body of law has to have internal coherence. In other words, a body of law needs to be based on unifying principles (e.g. economic logic) or motivated by an underlying theory of law.

Is that the character of IEcL? Thirty years ago, a leading scholar of IEcL opined: 'No general theory of international economic law has yet been fully developed in the literature.'[15] Today, I would reach the same conclusion while noting that a literature has emerged on the core principles of the WTO and world trade law.[16]

Rather than a careful buildout of IEcL as a concept, the emphasis of most international scholars and practitioners has been to fructify specialized fields of public international law without necessarily classifying them as part of IEcL. Over the past century, this has happened with the law of culture, development, environment, public health, human rights, intellectual property, labor rights, monetary and currency issues, the sea, and telecom. Each of these fields has its own treaties, international organizations, and regimes. Some are regularly invited by the WTO to cooperate (e.g. the IMF); some are only rarely invited (e.g. the ILO). The growth of these fields has been inspirited by new technology and better communication for the transmission of norms. The importance of this functional approach to international governance was recognized by the political theorist Leonard Woolf in 1916 and the political scientist David Mitrany in 1933. Philip C. Jessup championed a 'functional approach as applied to international law' in 1928 when he defined the functional approach as 'an attempt to correlate rules of law

[14] See Ernst Feilchenfeld, *The International Economic Law of Belligerent Occupation* (Washington, DC: Carnegie Endowment, 1942).

[15] Pieter VerLoren van Themaat, *The Changing Structure of International Economic Law* (The Hague: T.M.C. Asser Institute, 1981) 13.

[16] For example, see José E. Alvarez (ed.), 'Symposium: The Boundaries of the WTO', 96 American Journal of International Law 1 (2002); Donald H. Regan, 'What Are Trade Agreements For? – Two Conflicting Stories Told by Economists, With a Lesson for Lawyers', 9 Journal of International Economic Law 951 (2006); and the ongoing American Law Institute Project on Legal and Economic Principles of World Trade Law (organized by Lance Liebman and Petros Mavroidis).

with the forms of human activity which they purport to regulate or from which they spring.'[17]

The remainder of this essay will proceed as follows: Section II provides a partial timeline for the key milestones along the road toward a law for the world economy. Although this essay will not seek to reframe IEcL, Section III will discuss the historical development of the term and meaning of IEcL and highlight the most important scholarship written in English.[18] In Section IV, this essay will conclude with a discussion of the 'linkage' challenge to IEcL, and offer some ideas for a forward-looking analytical agenda.

II. MILESTONES TOWARD BUILDING THE WORLD TRADING SYSTEM

As context for a discussion of the scholarship on IEcL beginning in the mid-20th century, it will be useful to make available a timeline for the policy developments that preconditioned that scholarship. A timeline for all of IEcL would be too lengthy for a short essay, but it would be possible to present a timeline underlying the construction of the world trading system in the late 1940s. From the scholarship that I am aware of, the trading system is a common element of everyone's concept of IEcL.

The core non-discrimination standards of most-favored-nation (MFN) treatment and national treatment hark back many centuries. According to Georg Schwarzenberger, a non-reciprocal MFN guarantee had become a fixture of treaties concluded by the United Kingdom by the end of the 15th century.[19] Looking at early 20th century practice, Schwarzenberger further explained that 'exceptions on grounds of international public policy are overriding and suspend the operation of the m.f.n. standard.'[20] As an example, he pointed to import or export prohibitions that were obligations of international agreements (e.g. opium).

For centuries, some leading governments have negotiated treaties on commerce and amity that covered not only tariffs and customs,[21] but also fair treatment of persons operating abroad as merchants, commercial associations, or commercial travelers.[22] For example, a U.S.—Venezuela Treaty

[17] Remarks of Professor Jessup, in *Proceedings of the Third Conference of Teachers of International Law* (Washington, DC: Carnegie Endowment, 1928) 134.

[18] One clear omission here is the German scholars such as Georg Erler and Rolf Stödter. For a review of one of Erler's books, see Ervin P. Hexner, Book Review of *Grundprobleme des Internationalen Wirtschaftsrechts* (1956), 53 American Journal of International Law 503 (1959).

[19] Georg Schwarzenberger, 'The Most-Favoured-Nation Standard in British State Practice', 22 British Year Book of International Law 96 (1945), at 97.

[20] Ibid, at 120.

[21] There was also an important formative experience in the development of the German Customs Union between 1834 and 1871. The Zollverein had internal free trade.

[22] William Smith Culbertson, *International Economic Policies* (New York: D. Appleton and Company, 1925) 26; William Malkin, 'International Law in Practice', 49 Law Quarterly Review 489 (1933), at 500; Georg Schwarzenberger, 'International Law in Early English Practice', 25 British Year Book of International Law 52 (1948), at 86.

of 1860 provided that citizens of either country could 'enter, sojourn, settle and reside' in the territory of the other with the right to engage in business, to hire and occupy warehouses, to employ agents and brokers and to have access to the tribunals of justice on the same terms as native citizens.[23] The Treaty also provides a minimum standard of 'perfect liberty of conscience' for citizens of one party residing in the other.[24] The Peace, Friendship, and Commerce treaty between China and Great Britain signed in 1858 contained a labor market provision committing the Chinese government to place no restrictions on the employment (in any lawful capacity) of Chinese workers by British nationals in China.[25] Looking back at this mountain of treaty practice from the perspective of the mid-20th century, Georg Schwarzenberger took note of how '[a] good many of the minimum standards fixed in these treaties grew into rules of international customary law and thus became available to the other subjects of international law.'[26]

In 1890, governments constituted the International Union for the Publication of Customs Tariffs. Today, this Union operates as the International Customs Tariff Bureau. The Bureau publishes translations of customs tariffs into five official languages.

The first convention and international organization to address the problem of subsidies in international trade was the International Sugar Union of 1902 and its Permanent Commission. Members were bound to confirm their sugar bounties to the Convention and to impose countervailing duties against non-signatory States. The Commission operated by majority voting, but by 1920, disagreement among members led to its dissolution.[27]

The first decade of the 20th century saw the introduction of treaties prohibiting trade in a particular product for public policy reasons. For example, in 1902, the Convention for the Protection of Birds Useful to Agriculture forbade the importation and sale of designated birds. In 1906, a Convention was agreed to for the Prohibition of the Use of White Phosphorus in the Manufacture of Matches. The Convention prohibits the importation of such matches and their domestic sale. The main purpose of the Convention was to protect match workers from a noxious occupational disease, but there was also some indication that the phosphorus was harmful to consumers.

[23] Treaty of Amity, Commerce, Navigation, and Extradition, 27 August 1860, 2 Malloy 1845, Article III.

[24] Ibid, Article IV.

[25] Treaty of Peace, Friendship, and Commerce between Great Britain and China, 26 June 1858, Article 13 in *Handbook of Commercial Treaties*, 3rd ed. (London, 1924) 50.

[26] Georg Schwarzenberger, 'The Protection of Human Rights in British State Practice', in George W. Keeton and Georg Schwarzenberger (eds), *Current Legal Problems* (London: Stevens and Sons, 1948) vol. 1, 152–69 at 162 (footnote omitted).

[27] Bob Reinalda, *Routledge History of International Organizations* (London: Routledge, 2009) 126–28.

In 1913, a multilateral agreement was effectuated to establish an International Bureau on Commercial Statistics.[28] The Bureau published a bulletin reporting import and export data. According to the Union of International Organizations, the Bureau was dissolved in 1935.

In 1916, the British economist John A. Hobson wrote an important book titled *Towards International Government*. After taking note of the 'immense and ever-growing field of constructive international co-operation', Hobson called for an International Council to restructure this cooperation 'to a common, intelligible, and reliable system, with provisions for periodical revision and improvement....'[29] Hobson was a creative thinker who saw connections among different aspects of economic policy. For example, he pointed out that '[t]he utilization of the economic resources of the world for the benefit of the world demands the open door, not only for trade and for capital but for labour'.[30] He also took note of the 'tendency of powerful States to domineer over Weaker States,' and advised that this problem 'can only be remedied by a more intelligent co-operation of the weaker members on the one hand, and by an increasing sense of human solidarity upon the other'.[31]

The Peace Treaties of 1919 (Treaty of Versailles) contained many economic provisions. The Covenant of the League of Nations committed the Members of the League to 'make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League'.[32] The Peace Treaty also gave Germany an opportunity to make commitments to the Allied and Associated States regarding trade. Specifically, Germany agreed not to discriminate with respect to customs regulations, import duties, internal charges, import prohibitions, and export duties and prohibitions.

The Treaty of Versailles also contained the constitutional provisions of the ILO which include several substantive understandings and procedural innovations that were to influence international law over the ensuing century. Among the substantive understandings were: (i) a recognition that 'differences in climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labor difficult of immediate attainment' and (ii) a recognition that 'the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations

[28] Convention for the Establishment of an International Office of Commercial Statistics, with common list of goods, regulations of the Office, and protocol, 31 December 1913, 116 BFSP 575; 'International Bureau of Commercial Statistics' in League of Nations, *Handbook of International Organizations* (Geneva: League of Nations, 1938) 362.

[29] John A. Hobson, *Towards International Government* (New York: MacMillan Company, 1916) 117.

[30] Ibid, at 142.

[31] Ibid, at 145–46.

[32] Treaty of Peace with Germany, 28 June 1919, Article 23.

which desire to improve the conditions in their own countries'.[33] Among the procedural innovations were: (i) the establishment of an elected ILO Governing Body, (ii) tripartite representation of States by delegates from governments, worker organizations, and employer organizations, (iii) the use of an Annual Conference to formulate and adopt new conventions, and (iv) the establishment of a detailed system for the resolution of complaints by governments. Complaints may also be initiated by the Governing Body on its own motion or in response to a complaint by a worker or employer delegate.

In its early years, the ILO addressed some issues relating to trade in services and goods. For example in 1925, the ILO adopted the Equality of Treatment (Accident Compensation) Convention (No. 19) to require national treatment with respect to workmen's compensation following an industrial accident injuring a foreign worker.[34] In 1919, the ILO adopted the Anthrax Prevention Recommendation (No. 3) that called on governments to make arrangements for the disinfection of wool infected with anthrax spores either in the country exporting such wool or at the port of entry.[35]

The League of Nations moved quickly to set up committees to address its policy responsibilities. There was an Economic Committee, a Financial Committee, a Communications and Transit Committee, and many others. The Economic Committee was especially active. One of its early successes was to spearhead the diplomatic conference adopting the International Convention relating to the Simplification of Customs Formalities of 1923.[36] As John H. Jackson has noted, this Convention covered many matters now treated in the General Agreement on Tariffs and Trade (GATT).[37]

The year 1927 was an incubus for international economic cooperation. The Economic Committee worked to organize a diplomatic conference that adopted the International Convention for the Abolition of Import and Export Prohibitions and Restrictions. Although ratified by the United States, this Convention failed to come into force definitively. At the same time, the Economic Committee worked to organize the World Economic Conference of 1927 which was convened as an expert rather than a diplomatic conference. Thus, the attending delegates did not speak for governments even when they were government officials. The Conference issued a number of proposals for future multilateral action—for example, a treaty for execution of arbitral awards and a systematic customs nomenclature. The Conference also called on governments to 'remove or diminish those tariff barriers that

[33] Ibid, Part XIII Preamble and Article 427.

[34] Convention Concerning Equality of Treatment for National and Foreign Workers as Regards Workmen's Compensation for Accidents No. 19, 5 June 1925, 3 Hudson 1616.

[35] ILO Recommendation No. 3, http://www.ilo.org/ilolex/english/recdisp1.htm (visited 14 February 2011).

[36] Simplification of Customs Formalities, 3 November 1923, 30 LNTS 371.

[37] John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations* (Cambridge, MA: MIT Press, 1989, 1992) 31.

gravely hamper trade' and to 'refrain from having recourse' to 'direct or indirect subsidies'.[38]

The Economic Committee spent years studying MFN and seeking ways to improve its legal language.[39] When the GATT was drafted in 1947, MFN was formulated as being unconditional,[40] and this rule has been strengthened through interpretation in many GATT and WTO dispute cases. Most recently in 2010, a trade law panel for the first time held that GATT Article I:1 would cover an import ban.[41]

The other League committees also left important legacies to IEcL. For example, the Communications and Transit Committee laid the groundwork for the Barcelona Conference of 1921 which produced the Convention and Statute on Freedom of Transit and the Convention on the Regime of Navigable Waterways of International Concern. The Financial Committee promoted the negotiation of the Convention for the Suppression of Counterfeiting Currency which was signed in 1929.[42]

In 1933, the League of Nations Assembly convened the International Monetary and Economic Conference (London Conference). True, the Conference did not succeed in achieving trade and currency stability, but in my view the Conference has been unfairly maligned as a failure. Looking back, it is clear that the Conference left an important policy legacy[43] including: groundwork on the production and marketing of commodities that lead to the negotiation of several intergovernmental commodity agreements (e.g. wheat and sugar); agreed-upon principles of monetary policy and the role of gold as the international measure of exchange value; agreed-upon principles on the need for independent central banks with requisite powers to carry out currency and credit policy; and recognition of the need for a diplomatic conference to address indirect protectionism via veterinary standards. Such a diplomatic conference was held in 1935 when three international conventions were signed for animal sanitary standards and the transit and trade of animal products.

Besides what was going on within the League of Nations, there was also international economic cooperation being accomplished elsewhere. For example, in February 1923, an international conference of Central American

[38] 'Report of the World Economic Conference', 134 Annals of the American Academy of Political and Social Science 174 (1927), at 188, 191.

[39] John H. Jackson, *World Trade and the Law of GATT* (Indianopolis: Bobbs-Merrill Company, Inc., 1969) 250–51.

[40] See VerLoren van Themaat, above n 15, at 333 ('Thus GATT is the logical conclusion of the centuries-old most-favoured-nation clause').

[41] WTO Panel Report, *United States – Certain Measures Affecting Imports of Poultry from China*, WT/DS392/R, adopted 25 October 2010, para 7.410.

[42] Denys P. Myers, 'Nine Years of the League of Nations 1920–28', World Peace Foundation Pamphlet Series 67–68 (1929–1930). The purpose of the Convention was to homologate legislative measures and cooperation between police authorities.

[43] Norman Hill, *The Economic and Financial Organization of the League of Nations* (Washington, DC: Carnegie Endowment, 1946) 64–67.

countries was held in Washington, DC where 14 treaties were signed. The most trade-related among them were the Convention on the Establishment of Free Trade and the Convention on the Practice of the Liberal Professions.

In 1940, at the Annual Meeting of the American Society of International Law (ASIL), ASIL President and U.S. Secretary of State Cordell Hull introduced Huston Thompson to make an Address calling for 'An International Trade Tribunal'.[44] Back in 1919, Huston had advised President Woodrow Wilson to seek a World Trade Tribunal at the Paris Peace Conference. After the Conference, Wilson told Huston, according to Huston, that the language in the Treaty about the economic role of the League of Nations could be a sufficient foundation for such a Tribunal. In his 1940 Address, Huston lamented that such a tribunal had not been set up and renewed his call for its establishment. Huston's proposed tribunal was to have jurisdiction over economic questions between individuals of nations, such as price fixing, theft of trademarks, dumping, and quotas.

My timeline will end with the UN Conference on Trade and Employment of 1947–48, and will not say much about it because most readers will be familiar with the Havana Charter and its sad fate. But I do want to underline the broad regime that the Charter of the International Trade Organization envisioned. Besides the commercial policy matters now in the GATT, the Charter covered employment policy and fair labor standards, economic development and reconstruction, restrictive business practices, and intergovernmental commodity agreements.

III. CHAMPIONS OF 'IEcL'

Section III identifies the early adopters of the term 'international economic law' and provides a brief overview of the contributions of the leading exponents of IEcL who have defined, developed, and redefined the field. The first publicist for the term 'international economic law' that I have been able to uncover was Ernst Feilchenfeld in his 1938 book *The Next Step: A Plain Man's Guide to International Principles*.[45] A major argument in his book is that the State has a responsibility to maintain adequate legislation and

[44] Huston Thompson, 'An International Trade Tribunal', 34 Proceedings of the American Society of International Law 1 (1940). Also in 1940, James Edward Meade called for an international organization to oversee international regulation of economic affairs. J.E. Meade, *The Economic Basis of a Durable Peace* (London: George Allen & Unwin Ltd, 1940) 9.

[45] Feilchenfeld was the Professor of International Organizations and Law at Georgetown University and Director of its Institute of World Polity. He died in 1956. In earlier writing, Feilchenfeld had observed that international law was 'backward' with regard to business and called for expanded study and research in the field of 'international commercial and financial law'. Ernst H. Feilchenfeld, 'International Law and International Commerce', 56 The Chamber of Commerce Journal (London) 770 (1928), at 770–71.

organization both in its domestic interest and to prevent spillovers of economic misery to other countries.

According to Feilchenfeld, the role of IEcL is to provide 'coherent legislative solutions for interdependent problems....'[46] Perhaps because it was written for the plain man, a casual reader today will find the book eccentric. A more careful reader will see some nuggets of wisdom as the book manifests early insights into future challenges of international economic policy. For example, the book discusses the problem of getting states to accept proposed solutions and notes that sometimes states see 'what the reformer often does not see, that certain measures (such as for instance free trade) are not acceptable unless a number of other problems are solved simultaneously....'[47] A year later, Feilchenfeld became the first person to use the term IEcL in the *American Journal of International Law.* He did so in a book review where he juxtaposed IEcL with international law.[48]

If anyone should be recognized as the father of IEcL, it would be Georg Schwarzenberger (1908–91), a Professor of International Law at the University of London, who began writing on IEcL in 1942 and authored seminal articles over three decades.[49] His first study of IEcL carefully examined the development of international economic and financial law by the Permanent Court of Justice. In that article, Schwarzenberger paid homage to Sir John Fischer Williams who 'taught us to apply methods which are especially suitable for our subject: i.e. common sense, just assessment of conflicting interests, and a constant regard for the economic and financial realities underlying this branch of the legal system'.[50]

In 1948, Schwarzenberger pointed out the need for establishing special branches of international law and sought to define the province of IEcL within public international law. In his view, IEcL included MFN[51] and national treatment, commercial treaties, protection of property abroad, the Calvo Clause, the Porter Convention, monetary agreements, State loans and other State contracts, methods of international financial control, trading with the enemy, the economic law of military occupation, protection of

[46] Ernst H. Feilchenfeld, *The Next Step: A Plain Man's Guide to International Principles* (Oxford: Basil Blackwell, 1938) 22–23.

[47] *Ibid*, at 69.

[48] Ernst H. Feilchenfeld, Book Review of Paul Einzig, *World Finance*, 33 American Journal of International Law 427 (1939), at 428.

[49] In 1970, Professor Fatouros lauded Schwarzenberger as 'a pioneer of international economic law since long before it became the staple of fashionable symposia....' A.A. Fatouros, Book Review of Georg Schwarzenberger, *Foreign Investments and International Law*, 64 American Journal of International Law 462 (1970).

[50] Georg Schwarzenberger, 'The Development of International Economic and Financial Law by the Permanent Court of Justice', 54 Juridical Review 21 (1942), at 24.

[51] Three years earlier, Schwarzenberger had written an article on MFN noting that it 'answers to constant needs of international society, and it suggests that the functions fulfilled by the [MFN] standard are not essentially affected by the peculiarities of time or place or by differences in social and economic systems.' Schwarzenberger, above n 19, at 98.

neutral property, the law of reparations, and the law of international economic and financial institutions.[52] IEcL was largely treaty law for the 'same social purpose',[53] he explained, because the offshoots modified the baseline of international customary law. Schwarzenberger was among the earliest scholars to appreciate how legal commitments to afford rights to resident foreign nationals would lead to a transformation of municipal law in order to endow similar rights to nationals.[54]

Among international law scholars, Schwarzenberger may have been the quickest to take note of the significance of the GATT. Writing in 1948, he predicted that the effect of the GATT would be 'to limit—however slightly—economic sovereignty by the silken cords of *pacta de contrahendo*,' and to create 'an international economic organ not condemned merely to study, report and recommend, but authorized to act and decide.'[55] It is also interesting to note that Schwarzenberger may have been the first commentator to have 'singled out for special comment' GATT Article X:3 as an international minimum standard that 'makes it incumbent on States to grant a certain minimum of justice and judicial protection to foreign nations and companies....'[56] His article also explains that while IEcL 'may be very junior as an academic discipline,' it may 'lay claim to considerable seniority' because of the relevant treaty practice going back 800 years.[57]

In 1966, Schwarzenberger gave a Hague Academy lecture on IEcL that refined his previous scholarship. On the matter of definition, he explained:

> ...it is probably advisable to exclude from International Economic Law topics, which, in the abstract might be included, such as International Labour Law, International Social Law, International Transport Law, and the Law of International Copyrights and Industrial Design. These aspects of International Economic Law in the widest sense are sufficiently coherent, self-contained and important to form specialized branches of international law on their own.[58]

[52] Georg Schwarzenberger, 'The Province and Standards of International Economic Law', 2 International Law Quarterly 402 (1948), at 405. The Porter Convention is also known as the Drago Doctrine on the non-use of force to recover debts.

[53] Ibid, at 409. See also Georg Schwarzenberger, 'The Frontiers of International Law', 6 Year Book of World Affairs 246 (1952), at 249 (noting that a branch of international law 'has its own legal principles and standards which distinguish it from the general principles of international law and from each other').

[54] Schwarzenberger, above n 19, at 106

[55] Schwarzenberger, above n 52, at 420.

[56] Ibid, at 417.

[57] Ibid, at 409.

[58] Georg Schwarzenberger, 'The Principles and Standards of International Economic Law', 117 Recueil des Cours 1 (1966), at 8. In an article written in 1971, Schwarzenberger suggested that International Labor and Social law 'are merely on the fringes of International Economic Law', thus implying that they might still be part of IEcL. Georg Schwarzenberger, 'Inequality and Discrimination in International Economic Law (I)', 25 Yearbook of World Affairs 163 (1971), at 171.

He also pointed out how the treaty-based rules for the treatment of foreign merchants laid the foundation for the rule on the minimum standard of treatment of foreign nationals in customary international law. Looking back at the Havana Charter, he remembers it as 'the high watermark in the post-1945 world of liberal and social democratic thinking in the field of international economic relations'.[59]

Although Schwarzenberger was the leading scholar of IEcL in the 1940s, there were also other writers of that era who were using the term. For example, in 1944, T. Guldberg produced an authoritative analysis of international concessions which explained that the concession agreement was a singular phenomenon of 'international economic law.'[60] In a book review written in 1949, Leslie C. Green noted 'the growing significance of international economic law.'[61]

A text search of law journals during the 1950s reveals usage of the term IEcL in articles by Harold J. Berman, Bin Cheng, Wolfgang Friedmann, Josef L. Kunz, Charles Malik, D. Hughes Parry, Georg Schwarzenberger, Julius Stone, and others. For example in 1950, D. Hughes Parry heralded the appearance of '"[a] new branch of International Law" called "International Economic Law"' and noted that it had become a popular course at the University of London.[62] In 1959, Josef L. Kunz took note of writers who conceive of IEcL 'as a new juridical department which extensively overlaps international law and conflicts of law'.[63] One should also note that as early as the 1950s, Goethe University had an Institute of International Economic Law.

Attention to IEcL does not seem to have grown during the 1960s. Although the term gets utilized in a few international law journals such as *International and Comparative Law Quarterly* and the *British Year Book of International Law*, no seminal articles have come to my attention. Still, it is interesting to note that in 1960, Professor Jessup explained that although they were not technically courts, the GATT and IMF 'nevertheless apply the international economic law found in their respective charters to the conduct

[59] Schwarzenberger (1966), ibid, at 89.

[60] T. Guldberg, 'International Concessions: A Problem of International Economic Law', 15 Nordisk Tidsskrift for International Ret 47 (1944). Concessions are a grant by a State to a corporation of another State (e.g. a mineral concession).

[61] Leslie C. Green, Book Review of *International Arbitral Awards* and of *International Tax Agreements*, 1 Journal of the Society of Public Teachers of Law 322 (1949), at 324.

[62] D. Hughes Parry, 'The Place of Constitutional Law and International Law in Legal Education', 2 Journal of Legal Education 428 (1950), at 432. The course was taught by his colleague Professor Schwarzenberger. The topical syllabus appears in Georg Schwarzenberger, 'On Teaching International Law', 4 International Law Quarterly 299 (1951), at 305 (Appendix).

[63] Josef L. Kunz, 'The Systematic Problem of the Science of International Law', 53 American Journal of International Law 379 (1959), at 383.

of world trade and finance.'[61] In 1968, Stephen A. Silard wrote an article on international monetary cooperation in the IMF in which he foresaw that 'a growing body of practices which may well be recognized some day as rules of customary international economic law.'[65] In 1969, J.W. Samuels authored a historical analysis of international cooperation on narcotics control wherein he explained that the Narcotics Convention of 1931 contained 'many features of international control which are of particular interest in the field of international economic law.'[66] Also that year, Professor Schwarzenberger chose the topic of 'international economic law' for a new journal's inaugural issue honoring Francis Deák.[67]

During the 1970s, IEcL garnered greater attention in international law journals and in treatises. For example in 1971, Wolfgang Friedmann took note that 'a whole new body of international economic law is developing, stimulated by the demands of developing countries for the transformation of their economies.'[68] In 1974, the *American Journal of International Law* advised potential contributors that articles were welcomed 'on international law (including the history and theory of international law, international economic law, and private international law), the law of international organizations, and the foreign relations law of the United States and other countries.'[69] Beginning in 1975, a new multi-volume treatise on 'International Economic Law' was published in the United States under the co-editorship of Andreas F. Lowenfeld and Thomas Ehrlich, and later by Professor Lowenfeld. In 1978, a treatise titled *Droit International Économique* was published in Paris.[70]

The IEcL term flowered in the early 1980s perhaps as a result of the 1981 treatise by Pieter VerLoren van Themaat titled *The Changing Structure of International Economic Law.* In the book's Preface, VerLoren van Themaat explained that he chose this title in memory of Wolfgang Friedmann[71] and in

[64] Philip C. Jessup, 'International Litigation as a Friendly Act', 60 Columbia Law Review 24 (1960), at 37.

[65] Stephen A. Silard, 'The Impact of the International Monetary Fund on International Trade', 2 Journal of World Trade Law 121 (1968), at 132.

[66] J.W. Samuels, 'International Control of Narcotic Drugs and International Economic Law', 7 Canadian Year Book of International Law 192 (1969), at 201.

[67] Georg Schwarzenberger, 'An Evolving Economic World Order', 1 Rutgers-Camden Law Journal 242 (1969). For a fuller treatment, see Schwarzenberger, *Economic World Order? A Basic Problem of International Economic Law* (Manchester: Manchester University Press, 1970).

[68] Wolfgang Friedmann, 'The Reality of International Law–A Reappraisal', 10 Columbia Journal of Transnational Law 46 (1971), at 58.

[69] 'Some Information for Contributors to the *American Journal of International Law*', 68 American Journal of International Law 278 (1974).

[70] The authors were Dominique Carreau, Thiébaut Flory, and Patrick Juillard.

[71] VerLoren van Themaat, above n 15, at xxiv. Friedmann, a renowned international law professor at Columbia University, had been murdered during a daytime robbery in 1972 in Morningside Heights. William J. Perlstein, 'Violent Crime in the Streets', *New York Times*, 29 September 1972, 46.

honor of Friedmann's *The Changing Structure of International Law*. VerLoren van Themaat defines IEcL as the 'total range of norms (directly or indirectly based on treaties) of public international law with respect to transnational economic relations,' a definition that excludes customary international law and international private law.[72] His treatise seeks to update Schwarzenberger's definition[73] by adding in the regulation of energy and raw materials, transport, telecom, aid to developing countries, control of multinational enterprises, and environmental protection. His book also examines international economic organizations and dispute settlement, and he is attentive to the fact that 'non-governmental economic parties often have an even greater influence on the international economic process than the states themselves'.[74]

In the years thereafter, the term IEcL gained ever greater use. In 1982, Norbert Horn authored a thoughtful article on the New International Economic Order which employs the term 'international economic law' in a relaxed way without attention to definition.[75] In 1983, the first Interest Group in ASIL was organized as the Interest Group on 'International Economic Law.' In 1987, the *Revue Internationale de Droit Économique* began publishing.[76] In 1990, some fine teaching material was assembled and published under the title *Basic Documents of International Economic Law*.[77] In 1991, Ernst-Ulrich Petersmann authored an important study of various aspects of IEcL.[78]

The second treatise (in English) on IEcL was written in 1989 by Ignaz Seidl-Hohenveldern based on Hague Academy lectures delivered in 1979 and 1986. His treatise contains chapters on the subjects of law, sovereignty, sources of law, the State, the individual in IEcL, State responsibility, and dispute settlement in IEcL, among others. Seidl-Hohenveldern concludes that 'the rules of international economic law...belong to the category of international law rules based on reciprocity whose prospect of being respected is relatively greater than that of rules based either on the mere authoritarian *fiat* of a "leading" power, or on altruistic enthusiasm for a noble ideal'.[79]

[72] VerLoren van Themaat, above n 15, at 320.

[73] VerLoren van Themaat stylizes Schwarzenberger's definition as including reciprocity, MFN, open door, preferential treatment, cooperation, and equity and fair treatment. Ibid, at 322.

[74] Ibid, at 353.

[75] Norbert Horn, 'Normative Problems of a New International Economic Order', 16 Journal of World Trade Law 338 (1982), at 345, 350.

[76] Stephen Zamora, 'International Economic Law', 17 University of Pennsylvania Journal of International Economic Law 63 (1996), at 65 n 4.

[77] Stephen Zamora and Ronald A. Brand (eds), *Basic Documents of International Economic Law* (Chicago: Commerce Clearing House, 1990).

[78] Ernst-Ulrich Petersmann, *Constitutional Functions and Constitutional Problems of International Economic Law* (Boulder: Westview Press, 1991).

[79] Seidl-Hohenveldern, above n 4, at 169.

In recent decades, the greatest champion of the concept of IEcL is John H. Jackson. In 1985, Jackson wrote an entry for that term in the *Encyclopedia of Public International Law*[80] and also employed the term at the beginning of his well-received 1989 book, *The World Trading System.*

Jackson began that discussion by noting that the IEcL term 'is not well defined,' and pointing to both a very wide and a more restrained definition.[81] Jackson does not specify a definition, but notes that he will avoid the rigid bifurcation between monetary and trade law and between international and domestic rules.

In 1994, the ASIL Interest Group held a conference on Interdisciplinary Approaches to IEcL where Jackson's contributions were celebrated by David Kennedy who had written a nice essay with the memorable title of 'The International Style in Postwar Law and Policy'. In that essay, Kennedy examined the contributions of two texts: Hans Kelsen's *Law and Peace in International Relations* (1941) and Jackson's *World Trading System.* Although Kennedy notes Schwarzenberger's work over four decades earlier, he credits Jackson with introducing and presenting a 'new discipline of international economic law'.[82]

At the ASIL Interest Group conference, Kennedy presented the portion of his essay discussing Jackson.[83] Jackson also participated in the conference and his conference paper was published as 'International Economic Law: Reflections on the "Boilerroom" of International Relations.'[84] In that article, Jackson explains that IEcL embraces the law of economic transactions, government regulation of economic matters, and litigation and international institutions for economic relations. Because so much of international law work 'is in reality international economic law in some form or another,'[85] Jackson notes, IEcL cannot be separated from public international law. In addition, he points to the value of a multidisciplinary approach to IEcL which embraces economics, but also political science, cultural history, anthropology, and geography.

In another essay published from that same conference, Joel Paul suggests that IEcL includes 'all national and international legal norms that

[80] John H. Jackson, 'Economic Law, International', in Rudolph Bernhardt (ed.), *Encyclopedia of Public International Law* (Amsterdam: North-Holland Pub. Co., c1981–1990) vol. 8, 149–161. Jackson notes that the subject of IEcL is to a large extent steered by economics.

[81] Jackson, above n 37, at 21, 312 (referencing recent works in French and Italian on IEcL).

[82] David Kennedy, 'The International Style in Postwar Law and Policy', 1994 Utah Law Review 7 (1994), at 63, 67–69.

[83] David Kennedy, 'The International Style in Postwar Law and Policy: John Jackson and the Field of International Economic Law', 10 American University Journal of International Law and Policy 671 (1995).

[84] John H. Jackson, 'International Economic Law: Reflections on the "Boilerroom" of International Relations', 10 American University Journal of International Law and Policy 595 (1995).

[85] Ibid, at 596.

affect transnational movement of goods, services, capital and labor.'[86] Although there is much attractive in Paul's broad functional definition, the challenge is to identify threads of internal coherence in wide-ranging legal norms.

The term IEcL became further solidified in 1996[87] when the *University of Pennsylvania Journal of International Economic Business Law* is rechristened to the *University of Pennsylvania Journal of International Economic Law.* The first issue of the newly-named journal contains several excellent short articles on IEcL. For example, Ron Brand defines IEcL as embracing the rules governing relationships among private parties (including rules promulgated by the International Chamber of Commerce), the rules governing relationships among sovereigns, and the rules governing relationships across sovereigns and private parties.[88] Robert Hudec reminds scholars that IEcL has a 'political theatre dimension' in which conflicting national positions are papered over without being resolved.[89] Joel Trachtman suggests that IEcL is revolutionary in collapsing the distinctions between international public and private law and by changing the underlying assumptions in public international law regarding the domain reserved to the state.[90] Stephen Zamora notes that IEcL is 'still striving towards increased recognition and definition,' and offers his own succinct definition, namely that IEcL 'comprises a broad collection of laws and practices that govern economic relations between actors in different nations.'[91] And there is also an essay by Jackson distilling four characteristics of IEcL.[92]

In 1998, Professor Jackson launched this *Journal* as an international and interdisciplinary journal on IEcL. Over the past dozen years, the *Journal* has featured many essays exploring the meaning and evolution of IEcL. For example, in the first volume, Jackson postulated that IEcL can be divided into two broad approaches: viz., transactional and regulatory.[93] In 2001,

[86] Joel R. Paul, 'The New Movements in International Economic Law', 10 American University Journal of International Law and Policy 607 (1995), at 609 n 9.

[87] Also that year, Volume 18 of the *Cardozo Law Review* contained a symposium on 'The Decline of the Nation State and its Effect on Constitutional and International Economic Law.' None of those articles had much to say explicitly about IEcL.

[88] Ronald A. Brand, 'Semantic Distinctions in an Age of Legal Convergence', 17 University of Pennsylvania Journal of International Economic Law 3 (1996), at 4.

[89] Robert E. Hudec, 'International Economic Law: The Political Theatre Dimension', 17 University of Pennsylvania Journal of International Economic Law 9 (1996).

[90] Joel Trachtman, 'The International Economic Law Revolution', 17 University of Pennsylvania Journal of International Economic Law 33 (1996).

[91] Zamora, above n 76, at 63.

[92] John H. Jackson, 'Reflections on International Economic Law', 17 University of Pennsylvania Journal of International Economic Law 17 (1996).

[93] John H. Jackson, 'Global Economics and International Economic Law', 1 Journal of International Economic Law 1 (1998), at 8–9. It is also interesting to note that a *festschrift* in Jackson's honor, published in 2000, was titled: *New Directions in International Economic Law.*

Ernst-Ulrich Petersmann gave a comprehensive treatment to the relationship between IEcL and human rights.[94] In 2007, John Jackson offered a detailed list of the enormous challenges facing IEcL.[95] In 2009, Thomas Cottier called for a rethinking of IEcL following the financial crisis.[96]

The most recent developments bring this brief history up to date. In 2004, the *Manchester Journal of International Economic Law* commenced publication. In 2008, the Society of International Economic Law (SIEL) was launched in Geneva and a second conference was held in Barcelona last year. Also in 2008, the papers from the ASIL Interest Group conference of 2006 were published as *International Economic Law: The State and Future of the Discipline.*

IV. NORMATIVE INFLUENCES TO AND FROM IEcL

Categories sometimes lead to rigidities. A few decades ago, some scholars perceived international trade law as 'self-contained' or isolated from public international law.[97] No one would dare say that today, as there are so many examples in WTO jurisprudence of how general and specialized international laws are influencing WTO law. Less well appreciated, but equally important, is the way that trade law influences public international law. A spotlight was shined on that area of study by Don McRae's excellent Hague Academy lecture in 1996.[98]

The problem of coordination between economic and other fields has been given considerable attention, but no effective solution has been put in place. In 1939, the League of Nation's Bruce Committee issued a report on 'The Development of International Co-operation in Economic and Social Affairs' which called for better coordination of those activities.[99] These recommendations laid the groundwork for the establishment in the UN Charter of the Economic and Social Council (ECOSOC), but ECOSOC has not been a successful coordinating institution.

[94] Ernst-Ulrich Petersmann, 'Human Rights and International Economic Law in the 21st Century', 4 Journal of International Economic Law 3 (2001).

[95] John H. Jackson, 'International Economic Law: Complexities and Puzzles', 10 Journal of International Economic Law 3 (2007).

[96] Thomas Cottier, 'Challenges Ahead in International Economic Law', 12 Journal of International Economic Law 3 (2009).

[97] Noted by John H. Jackson, *Sovereignty, the WTO, and Changing Fundamentals of International Law* (Cambridge: Cambridge University Press, 2006) 48.

[98] See Donald M. McRae, 'The Contribution of International Trade Law to the Development of International Law', 260 Recueil des Cours 1 (1996).

[99] Hill, above n 43, at 110–19; Reinalda above n 27, at 367.

In 1951, Wilfred Jenks wrote a masterful study of the overall problem pointing out that:

> The penalty for ignoring the numerous interactions between the different branches of public policy when framing plans for international action is that it becomes impossible to deal effectively on an international basis with any one of the branches of public policy which are thus artificially disassociated. Political, economic, and social objectives which are mutually incompatible cannot be successfully pursued simultaneously for indefinite periods. Co-ordination between the different branches of public policy must be secured at some level, for a greater or lesser area, if complete chaos and frustration are to be avoided.[100]

Jenks, who later served as Director-General of the ILO, died in 1973. One wonders what he would have thought of the WTO's Seattle Ministerial Conference in 1999 and the chaos and frustration that reigned there in part because of public apprehension about how the WTO might adversely impact worker rights and environmental protection.

Among his many legacies, Professor Jenks left us with an appreciation of the problem of divergent international norms. Today, there is a growing body of literature on harmonizing norms between regimes.[101] Over the past 25 years, there has been a great deal of literature (sometimes denoted 'Trade and') on how the norms of other bodies of law have or should influence world trade law.[102] By contrast, there has been much less literature on how the norms of world trade law or IEcL have influenced and should influence other fields of public international law.[103]

Looking ahead, the research agenda for IEcL should include how the norms of international trade law could usefully influence the norms of

[100] C. Wilfred Jenks, 'Co-ordination in International Organization: An Introductory Survey', 28 British Year Book of International Law 29 (1951), at 30.

[101] For example, Steve Charnovitz, 'Competitiveness, Harmonization, and the Global Ecolonomy', in Maury E. Bredahl et al. (eds), *Agriculture, Trade & the Environment: Discovering and Measuring the Critical Linkages* (Boulder: Westview Press, 1996) 47–58; Fridl Weiss, Erik Denters and Paul de Waart (eds), *International Economic Law with a Human Face* (The Hague: Kluwer Law International, 1998); Joost Pauwelyn, *Conflicts of Norms in Public International Law* (Cambridge: Cambridge University Press, 2003); Lamy Calls for Mindset Change to Align Trade and Human Rights, WTO Press, 13 January 2010.

[102] For example, Steve Charnovitz, 'The Influence of International Labour Standards on the World Trading Regime', 126 International Labour Review 565 (1987); Daniel C. Esty, *Greening the GATT* (Washington, DC: Institute for International Economics, 1994); Jagdish Bhagwati and Robert E. Hudec (eds), *Fair Trade and Harmonization: Prerequisites for Free Trade?* (Cambridge, MA: MIT Press, 1996), vol. 2 titled 'Legal Analysis'; The symposium consisted of articles by Frank J. Garcia *et al.* 'Symposium: Linkage as Phenomenon: An Interdisciplinary Approach', 18 University of Pennsylvania Journal of International Economic Law 201 (1998).

[103] One example is Steve Charnovitz, 'Trade Law Norms on International Migration', in T. Alexander Aleinikoff and Vincent Chetail (eds), *Migration and International Legal Norms* (The Hague: T.M.C. Asser Press, 2003) 241–53.

international environmental law, international labor law, and other fields parallel to IEcL. As a veteran of the clash between environmental and trade interests during the early 1990s, I saw firsthand how the GATT epistemic community resisted the influence of environmental norms (Professor Jackson being a notable exception). But I also observed another sad phenomenon that has not been given as much discursive treatment, that is, how the environmental epistemic community can also be jealous of its normative turf, and sometimes resistant to progressive development coming from IEcL.[104]

In conclusion, insofar as IEcL has suffered from the weight of attention being placed on inward influences from adventitious bodies of law, new founts of scholarship can rebalance IEcL by discovering possible gains in coherence from outward influences. A renewed emphasis on what IEcL can add to other fields might also provide new insights into one of the core doctrinal puzzles of IEcL—namely, whether it is distinct from or overlapping with related bodies of law, such as international environmental law. If there is a way to achieve a conceptual unification of IEcL, even in the broad manner described by Professor Paul,[105] it will come from placing individual economic and social actors at the center of the analysis of how to maximize market freedom while respecting human dignity.[106]

[104] One counter example has been the embrace of emission trading by the international climate regime.

[105] See text accompanying above n 86.

[106] See Edward A. Laing, 'International Economic Law and Public Order in the Age of Equality', 12 Law & Policy in International Business 727 (1980), at 746 ('The moral precept advocated in this article as a foundation for international economic law is that of human dignity....').